



Office of the City Manager

ACTION CALENDAR
September 27, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted By: Dan Marks, Director, Planning and Development

Subject: Downtown Area Plan Work Program and Public Participation Process

RECOMMENDATION

Adopt a Resolution appointing a Downtown Area Plan Advisory Committee.

SUMMARY

Staff is presenting a draft work program for the Downtown Area Plan (DAP) for Council comments and is seeking Council direction on a public participation program for the DAP. Several public participation options are suggested for consideration.

FISCAL IMPACTS OF RECOMMENDATION

One FTE staff planner for the Downtown Area Plan is funded through the agreement with the University of California. There may be relatively minor additional administrative and overhead costs associated with undertaking the project that have not yet been quantified, but these will be absorbed within the Planning and Development Department's overall budget.

CURRENT SITUATION AND ITS EFFECTS

The City's Downtown Plan was adopted in 1990. However, the Committee that guided the plan began its work in 1984, and much of the analysis for the plan dates from the mid-1980's. Since work began on the Downtown Plan, much has changed about Berkeley's downtown. There had been very little new residential development in downtown for many years prior to the 1980's; although the plan allowed for new residential uses, the level of residential development that has occurred in the past few years was clearly not anticipated. The Arts District was mostly a dream; that vision has now been largely realized, with more art-related institutions to come.

In the mid-1980's, the City's downtown still retained some of its traditional character as a regional retail center. Since then, however, most of those retailers have departed. Even BART and the reconstruction of downtown that occurred when BART was developed were still relatively new changes to the downtown in the 1980's; today, the City is reconsidering BART's role in downtown. In addition, at that time the University as an institution was not a major land user in downtown, although it clearly was nibbling at the edges. Now, however, the University is a major part of the downtown area. In other words, much has changed in downtown to warrant reconsideration of a plan with its roots in the 1980's.

In 2004 and 2005 the University prepared an adopted a new Long Range Development Plan (LRDP) for 2005-2020. Unlike previous LRDPs, this one called for approximately 1 million square feet of new University development in the downtown area. One of the City's concerns with the University's approach to its LRDP was that it did not provide specific enough information about where the University's development would occur, and therefore lacked the type of guidelines and mitigations that could ensure that future University development did not have significant adverse impacts on the City. Since the University is constitutionally exempt from local land use control, this LRDP presented both a challenge and an opportunity. The challenge was to devise a way to specify the nature and location of, and accommodate, the new space the University intended to develop. The opportunity was to engage the University in planning for that space collaboratively with the City on an area-wide basis, rather than piecemeal, as had been the case in the past.

Resolution took the form of the settlement agreement (Agreement) signed in May 2005, under which the City and University agreed to undertake joint planning for the downtown area that was identified in the LRDP as receiving the most new University development, and the University agreed to share the cost of that planning effort and of environmental review of the resulting plan. The Agreement identified a larger area than the existing Downtown Plan, in order to incorporate areas just outside that area where the LRDP calls for significant University development (such as the State Department of Health site), and also to consider and mitigate the impacts of downtown development on surrounding neighborhoods. The Agreement establishes May 2009 as the target date for adoption of a Downtown Area Plan (DAP). If the City fails to meet this target, the University will reduce its financial contributions to the City under the settlement agreement; however planning and environmental review may continue to completion. As noted in the attached work program, when CEQA and procedural requirements for adoption are taken into account, this leaves approximately thirty months from May 2005 for preparation of a draft plan.

The DAP process is explicitly intended to incorporate University projects into the City in a manner that will encourage them to better fit into our downtown, adding to its vitality and character, rather than the pattern of much past University development, which has too often ignored its city context. Under the Agreement, the City and the University are expected to be partners in the planning process in order to achieve this goal. It should be understood, however, that while the Agreement anticipates that the City and University will attempt to agree on a joint plan that meets the needs of both entities, since the DAP will be an area plan adopted by the City, the City is the lead agency, and is ultimately responsible for the adequacy of environmental review and the DAP. Thus, the Agreement reserves to the University the right to disengage from the process if it believes its needs, as reflected in the Agreement are not being met. Such circumstances may include the DAP not adequately accommodating planned University development called for in the LRDP, or the environmental impact report (EIR) on the DAP seeking to impose mitigation measures that are unacceptable to the University.

By the same token, there is nothing in the Agreement that obligates the City to adopt a plan that it does not agree with; nor does the Agreement give the University "veto" authority over a plan the City of Berkeley wishes to adopt. Rather, the University's only "veto" power is to opt out, in

effect, to render the DAP a City plan rather than a joint plan. If the University chooses to withdraw from the process, the City may clearly proceed with its own planning, and its own EIR. Ultimately, as noted above, the University is exempt from City land use regulation, including the DAP (unless the University chooses to adopt it). However, as with the Draft Southside Plan (which is explicitly referenced in the LRDP), it is expected that if the University believes the DAP has been developed in good faith and addresses its fundamental interests, it will voluntarily choose to abide by it and implement it for its properties.

BACKGROUND

The UC/City agreement calls for several initial steps. Those steps and progress on them is described below (reference to page and section numbers are to the agreement).

Page 5, A-1, Staffing: The City has recently offered the position of lead City staff planner on the DAP to a very qualified individual. We expect this person to accept the position and begin work by the time the City Council receives this report. In addition to the lead planner who will be largely devoted to this project, we expect to apportion a part of the 1 FTE to other supporting staff, including a transportation planner or planning consultant to assist staff on transportation issues. The University has designated a lead staff person and also expects to allocate a portion of its FTE to other supporting staff.

Page 7, B-3: As required by this section of the agreement, UC and the City will be establishing a staff-level DAP joint preparation committee. The committee is expected to be composed of the two principal planners from the University and City, the Director of Planning and Development and the Acting Assistant Vice Chancellor, the Manager of Land Use Planning for the City, and at least one transportation planning staff member from the City. Other members may be added as needed. This committee is expected to have formal coordination meetings no less than once per month. The two project managers will meet more often.

The initial joint product of this working staff committee is the draft work program, attached. The work program anticipates that the City, and perhaps the University, will establish a policy advisory committee to guide staff in the plan development process. The work program assumes that the Council will determine the nature of the City's advisory process as part of its direction to staff, and various options are presented later in this report for the Council's consideration and direction. In summary, the proposed work program is a fairly standard approach to plan development: 1) background analysis; 2) establishment of vision and goals (or alternative vision and goals); 3) analysis of alternative development scenarios based on the vision and goals; 4) selection of preferred alternative; 5) draft plan preparation; 6) agreement on draft plan as basis for environmental impact report 7) preparation of EIR; 8) plan adoption through the Planning Commission and then City Council, with advice and recommendations from other relevant commissions (e.g., Transportation and Landmarks Commissions). In addition to having a policy advisory committee meeting on a regular basis to guide staff, the work program anticipates three or four broad public workshops that would include any interested parties, in addition to required

public hearings before the Planning Commission and City Council prior to their actions on the plan.

Staff also suggests that a technical advisory committee be established composed of staff of public agencies with direct interest in downtown (e.g., BART and AC Transit) and perhaps professional planners, architects, landscape architects and urban designers who would like to volunteer time to focus on more technical design and planning issues. A technical advisory group, if established, would be selected by, and be advisory to, staff, identifying public agency concerns and hopefully suggesting creative approaches to design, transportation and planning issues that would assist staff in providing a wide range of options to any policy advisory body.

Page 6, A-6: The University delivered to the City the required “list of University- and State-owned properties within the DAP area” that have potential for University development or redevelopment during the DAP-preparation period. This was received on August 25, 2005, within the 90 days set forth in the agreement for the City to receive this list.

Public Participation

There are innumerable models for public participation in the plan development process. Any of the models can be made to work, although based on staff’s experience, some tend to work better than others. There is no model that is likely to satisfy everyone. Several models are described below. As noted below, staff specifically does not recommend the first two of the models described. Staff does recommend that should the Council agree to establish a policy advisory body, that the group size remain as close as possible to 15 people. Group sizes of 15 are considered manageable, with the process becoming progressively less manageable and requiring progressively more time to reach agreements as the size increases. Group sizes over 20 are difficult to work with. Staff has also assumed (see attached draft resolution) that should a policy body be appointed, the Chair would be appointed by the Mayor. Staff is seeking direction from the Council as to which of these models it would like to follow, or some other option that the Council selects.

Workshop model. Under this approach, staff would hold a series of community forums or workshops, generally coinciding with each of the steps in the process (e.g., a background information/visioning workshop; a plan alternatives workshop, etc.). No separate advisory body would be appointed. Staff does not recommend this as the sole means of obtaining public input. Under this model, staff acts as a filter and consolidator of information and plan development and there is little opportunity for ongoing in-depth discussion and consensus building among stakeholders and community members. Moreover, the direction received at any workshop is dependent on who “shows up,” and can vary widely from workshop to workshop. While staff does not recommend this as the sole means for community input, Staff does expect to hold public workshops as a supplement to one of the other more deliberative public participation models described below.

Planning Commission. The Planning Commission, as the lead land use policy commission for the City, could be assigned the task of directly overseeing the DAP and providing policy guidance. While the Planning Commission is generally considered the deliberative body on land use policy for the City of Berkeley, staff does not recommend this approach because the DAP will be a significant time-consuming process in itself and the Commission already has a full-plate of other issues to be addressed in the next couple of years. Although staff does not recommend the Planning Commission as a whole be the primary advisory body, a Planning Commission subcommittee acting as the lead group for a stakeholder model (such as it did for the Hotel/Conference Center Task Force – see discussion below) is workable. Assignment to such a subcommittee would be a significant addition to the workload of the Commissioners on the subcommittee.

Stakeholders (Hotel/Conference Center Model). The stakeholder model would allow for the appointment of any number of people with specific interests in regard to the project area. For example, when the hotel/conference center was proposed for downtown, a Planning Commission Subcommittee appointed a number of stakeholders to a taskforce to assist the Commission in arriving at guidelines for the project. The stakeholder committee was composed of 20+ people, including nearby property owners, the downtown business association, individuals active in urban design, historic preservation advocates, various transportation-mode advocates, “green building” advocates, Strawberry Creek daylighting advocates, etc. As noted above, should this model be adopted by Council, Staff urges that the group size be manageable.

Council-appointed taskforce. The Council could directly appoint a task force that would either report to the Planning Commission or report back directly to the City Council. In order to increase the potential for various stakeholders to be appointed, each Councilmember could appoint two people. This model would allow the size to stay manageable and for the Council, through its appointments to ensure appropriate representation of stakeholder interests, as well as City-wide interests.

Council-appointed taskforce with additions (“Creeks Task Force Model”). This model is a variation on some of the above, in that the Council would appoint some members, while others are appointed or selected by others. For example, the Creeks Task Force is composed of 9 Council appointees, 4 Commission appointees (Planning, Public Works, Community Environmental Advisory and Parks and Recreation) and 2 stakeholder groups. It allows for some of the advantages of the Council model, but adds direct representation from responsible commissions and a limited set of other stakeholders. As with the “stakeholder” model, the key issue here is limiting participation to a manageable group size, and then determining which stakeholders will be invited to be members.

University Participation: Staff recommends that under whatever public participation process is ultimately adopted, that the University be invited to have either official or ex-officio representation on the policy advisory body. Staff believes that in the spirit of the Agreement, and because the University is such a major influence on the shape of downtown, that its direct

involvement in policy-level deliberation and recommendations to the City Council would be helpful for those engaged in helping to direct City policy development.

Required Procedures in All Cases: The Council should note that regardless of the form public participation takes, any amendments to the City's General Plan or adopted area plans (such as the existing Downtown Plan) must be the subject of a public hearing before the Planning Commission, must comply with all applicable state law requirements for general plans, and must undergo environmental review under the California Environmental Quality Act. Thus the Agreement provides that the City will be in charge of all proceedings before its commissions, and that the City and the University will evenly share the anticipated cost of an EIR.

Commission Recommendations

Staff has made or will be making introductory presentations on the DAP to the Planning Commission, the Transportation Commission and the Landmarks Preservation Commission. As of this writing, only the Transportation Commission has made a specific recommendation (enclosed) regarding public and Transportation Commission participation. The Planning Commission discussed this matter on September 7, after this report was prepared. Staff made a presentation to the Landmarks Preservation Commission on September 12, again, after this report was prepared. Any recommendations arising from the Planning Commission or LPC will be attached.

RATIONALE FOR RECOMMENDATION

The proposed work program is a standard approach to a land use plan and has been successfully followed in Berkeley and elsewhere. The key issue is how the community is directly engaged in the process, and staff has outlined a variety of processes, any one of which can be made to work. Staff is seeking Council direction on a specific approach.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives to the work program were considered. This report describes a range of alternative approaches to public participation, although there are many other options that can accomplish the same purpose, depending on the Council's direction.

CONTACT PERSON

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Attachments:

- 1: Resolution
- 2: DAP Draft Work Program

RESOLUTION NO. ##,###-N.S.

APPOINTING A DOWNTOWN AREA PLAN ADVISORY COMMITTEE

WHEREAS, the City of Berkeley and University of California entered into a May 25, 2005 Settlement Agreement (attached as Exhibit 1) which, among other matters, calls for the City and University to work in partnership to prepare a Downtown Area Plan (DAP), for consideration by the City Council by May 25, 2009; and

WHEREAS, the DAP shall be adopted in compliance with all applicable provisions of state law relating to the adoption and amendment of General Plans; and

WHEREAS, the DAP shall be adopted only after compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, notwithstanding the fact that the DAP is intended to be a joint City-University plan, the Settlement Agreement calls for the City to be the lead agency preparing the DAP; and

WHEREAS, in the event that the University opts out of the DAP pursuant to the Settlement Agreement, the City may still choose to continue with the DAP and adopt it; and

WHEREAS, the City Council therefore intends that DAP preparation be carefully guided by community members who can provide policy guidance to City and University staff who will prepare the plan; and

WHEREAS, the City Council intends for this advisory committee to be a temporary City of Berkeley commission as described in Section B 5 of the Agreement.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley establishes a temporary Downtown Area Plan Advisory Committee (DPAC).

BE IT FURTHER RESOLVED, that the DPAC shall consist of [to be completed by the City Council].

BE IT FURTHER RESOLVED, that the Mayor shall name the Chair of the DPAC from the appointed membership.

BE IT FURTHER RESOLVED, that the DPAC shall meet in accordance with the requirements of the Brown Act for noticing and accessibility.

BE IT FURTHER RESOLVED that the DPAC will be staffed as directed by the City Manager and that said staff may seek advice from unpaid outside experts who may act as a technical advisory committee.

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BE IT FURTHER RESOLVED, that the DPAC shall operate under the rules set forth in the City Council's resolutions for Commissions and the City's Commissioner's Handbook.

BE IT FURTHER RESOLVED, that all DPAC reports, recommendation and a Draft Plan will be submitted to the Planning Commission for public hearing and its recommendation.

BE IT FURTHER RESOLVED, that the DPAC must complete its work on a draft plan no later than November 2007, and that upon completing a draft plan for review in the CEQA process, the DPAC shall be disbanded.

BE IT FURTHER AND FINALLY RESOLVED, that upon completion of a draft plan for CEQA review the environmental impact report called for in the Settlement Agreement shall be prepared and completed in compliance with CEQA.

ATTACHMENT 2

DOWNTOWN AREA PLAN WORK PLAN/SCHEDULE

Overall schedule

May – October 2005: Start-up, including identification of public process, selection of staff, identification of work program, initial public outreach. Products: work program/schedule and Council adopted public participation process.

October 2005 – November 2007: Plan development (see below). Product: Draft Plan (or draft plan alternatives).

November 2007 – November 2008: Preparation of EIR on Draft Plan. Product: FEIR

October 2008 - May 2009: Review of Draft DAP and EIR by City commissions, recommendation by Planning Commission. Product: Council adoption of final DAP.

Plan Development Schedule:

Note: the following assumes an advisory committee appointed by the City, but including ex-officio representation from the University, will guide City staff through the draft plan development process. The University may have a parallel committee.

2005

September – January '06: background information gathered (land use, historic resources, transportation, etc.). Establish goals/vision for downtown (or alternative goals/visions)
October: first meeting of City advisory committee

2006

February – April: define and refine alternative scenarios to be considered/evaluated
May – October: alternatives evaluation
November – April '07: refine and select preferred development scenario

2007:

May – November: prepare draft plan based on preferred development scenario; review of draft plan by commissions (Transportation, Landmarks and Planning Commissions)
November: Council and Chancellor approve draft plan/preferred alternative for consideration (along with alternatives) in an Environmental Impact Report (EIR)